Reprinted
February 26, 2002

ENGROSSED
SENATE BILL No. 276

DIGEST OF SB 276 (Updated February 25, 2002 1:27 PM - DI 104)

Citations Affected: IC 27-2; IC 27-4; IC 27-8; IC 34-30.

Synopsis: Annual actuarial study of ICHIA and insurer use of credit information. Imposes certain requirements and restrictions concerning the use of credit information in the underwriting of property and casualty insurance. Makes a willful violation of the requirements an unfair and deceptive act and practice in the business of insurance. Requires the comprehensive health insurance association (ICHIA) to have completed an annual actuarial study of ICHIA and submit a copy to the legislative council. Requires ICHIA to annually adjust premiums based on the actuarial study. (The introduced version of this bill was prepared by the health finance commission.)

Effective: July 1, 2002; January 2, 2004.

Johnson, Craycraft
(HOUSE SPONSORS — CROOKS, RIPLEY)

January 7, 2002, read first time and referred to Committee on Health and Provider Services.
January 24, 2002, amended, reported favorably — Do Pass.
January 28, 2002, read second time, ordered engrossed. Engrossed.
January 31, 2002, read third time, passed. Yeas 50, nays 0.

HOUSE ACTION

February 5, 2002, read first time and referred to Committee on Insurance, Corporations and Small Business.
February 19, 2002, amended, reported — Do Pass.
February 25, 2002, read second time, amended, ordered engrossed.

Reprinted
February 26, 2002

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

ENGROSSED
SENATE BILL No. 276

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 27-2-21 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

Chapter 21. Credit Information in Property and Casualty Insurance

Sec. 1. As used in this chapter, "applicant" means an individual who applies for a policy of property and casualty insurance.

Sec. 2. As used in this chapter, "claim loss" means a claim paid under a policy of property and casualty insurance, including a claim for:

(1) bodily injury;
(2) property damage;
(3) medical payments;
(4) collision coverage;
(5) comprehensive coverage;
(6) car rental coverage; or
(7) towing coverage.

Sec. 3. As used in this chapter, "commissioner" refers to the commissioner of the department.

Sec. 4. As used in this chapter, "credit information" means credit related information obtained through a review of a credit history, credit report, or credit score, or on an application for a policy of property and casualty insurance.

Sec. 5. As used in this chapter, "credit score" means a number or rating derived through a credit scoring methodology.

Sec. 6. As used in this chapter, "credit scoring methodology" means the particular algorithm, computer model, or other method used by an insurer to reduce to a numerical or other rating for use in the insurance underwriting process certain credit history data contained in an individual's credit report.

Sec. 7. As used in this chapter, "department" refers to the department of insurance created under IC 27-1-1-1.

Sec. 8. As used in this chapter, "insured" means an individual who is entitled to coverage under a policy of property and casualty insurance.

Sec. 9. As used in this chapter, "insurer" means a person that:

(1) is described in IC 27-1-2-3(x); and

(2) issues a policy of property and casualty insurance.

Sec. 10. As used in this chapter, "property and casualty insurance" means one (1) or more of the kinds of insurance described in Class 2 and Class 3 of IC 27-1-5-1.

Sec. 11. (a) This chapter applies to an individual policy of property and casualty insurance.

(b) This chapter does not apply to a commercial line of insurance.

Sec. 12. (a) An insurer may not use a credit score until the insurer files with the commissioner the credit scoring methodology and changes to the credit scoring methodology that the insurer uses to develop the credit score.

(b) The commissioner shall review a credit scoring methodology and changes to the credit scoring methodology filed under subsection (a) for compliance with Indiana insurance laws and rules.

Sec. 13. (a) An insurer may not, based solely on credit information, refuse to issue, refuse to renew, or cancel a policy of property and casualty insurance.

(b) An insurer does not violate subsection (a) if the insurer offers to provide continuous and identical coverage to an insured under a policy of property and casualty insurance underwritten:

(1) by an affiliate of the insurer; and

(2) in the same rating class.

Sec. 14. If the credit score of an insured or applicant is adversely impacted or cannot be generated because the credit history of the insured or applicant is insufficient, an insurer shall:

(1) apply underwriting or rating criteria to the insured or applicant as if the insured or applicant had a neutral credit history, as defined in the insurer's underwriting guidelines or rate making standards unless otherwise actuarially justified; or

(2) exclude the use of credit as a factor in the underwriting or rating process.

Sec. 15. An insurer may not, based on credit information, refuse to issue, refuse to renew, or cancel a policy of property and casualty insurance, or transfer an insured to an affiliate or to a different rating class if the insured has:

(1) continuously maintained a policy of property and casualty insurance issued by the insurer;

(2) had no claim loss on the policy specified in subdivision (1); and

(3) had no moving traffic violations;

during the three (3) years immediately preceding the date on which the insurer makes a determination described in this section.

Sec. 16. (a) If credit information is used as a basis for a refusal to issue, refusal to renew, cancellation, or rating of a policy of property and casualty insurance, the insurer shall provide notice to the insured or applicant of the insurer's use of credit information as a basis for the refusal to issue, refusal to renew, cancellation, or rating of the policy of property and casualty insurance according to the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.).

(b) An insurer shall include in a notice required under subsection (a) notice that the insured or applicant has the right to, not more than ninety (90) days after the insured or applicant receives the notice required under subsection (a), request in writing from the insurer an explanation of the most significant reasons for the credit score result, including the principal factors involved in the refusal to issue, refusal to renew, cancellation, or rating of the policy of property and casualty insurance.

(c) Not more than twenty-one (21) business days after an insurer receives a request under subsection (b):

(1) the insurer; or

(2) a third party that:

(A) possesses the information necessary to provide an explanation requested under subsection (b); and

(B) is directed by the insurer to provide the requested explanation;

shall provide the requested explanation in writing to the insured or applicant.

(d) If an insurer, in the notice provided under subsection (a), provided the explanation requested under subsection (b), the insurer has met the requirement of subsection (c).

Sec. 17. (a) An insurer shall not use credit information as a pretext for discrimination against an insured or applicant that is based on the gender, race, nationality, or religion of the insured or applicant.

(b) A credit scoring methodology may not be used by an insurer if the credit scoring methodology incorporates the gender, race, nationality, or religion of an insured or applicant.

Sec. 18. Information provided by an insurer to the commissioner under this chapter is confidential.

Sec. 19. An insurance producer licensed under IC 27-1-15.6 is not liable in any action arising from the use of credit information by an insurer if the insurance producer complies with the insurer's procedures that are provided to the insurance producer by the insurer concerning the use of credit information.

Sec. 20. A willful violation of this chapter is an unfair and deceptive act and practice in the business of insurance under IC 27-4-1-4, as determined by the commissioner.

Sec. 21. This chapter is not intended to conflict with any disclosure provisions of state law or the federal Truth in Lending Act (15 U.S.C. 1601 et seq.).

Sec. 22. An insurance producer or an insurer shall not obtain credit information on an insured or an applicant without giving sufficient notice and obtaining the written approval of the insured or the applicant. The written approval of the insured or the applicant shall be valid for all subsequent requests for credit information while insured by the same insurer unless revoked in writing by the insured or the applicant.

SECTION 2. IC 27-2-21-16.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 2, 2004]: **Sec. 16.1. (a) This section applies to an insured or applicant to whom notice is provided under section 16 of this chapter.**

(b) This section supplements the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.).

(c) In addition to the explanation that an insurer must provide under section 16 of this chapter, an insurer shall, not more than twenty-one (21) business days after the insurer receives a request under section 16 of this chapter, provide in writing to the insured or applicant the requested explanation, and additional information involved in the refusal to issue, refusal to renew, cancellation, or rating of the policy of property and casualty insurance, including:

(1) notice that a credit score was a determining factor in the insurer's decision;

(2) a thorough explanation of the credit scoring process used by the insurer;

(3) a list of all factors contained in the credit history of the insured or applicant that were used to derive a credit score that negatively affected the insurability of the insured or applicant; and

(4) an explanation of how the factors listed under subdivision (3) negatively affected the insurability of the insured or applicant.

SECTION 3. IC 27-4-1-4, AS AMENDED BY P.L.132-2001, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 4. The following are hereby defined as unfair methods of competition and unfair and deceptive acts and practices in the business of insurance:

(1) Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, or statement:

(A) misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon;

(B) making any false or misleading statement as to the dividends or share of surplus previously paid on similar policies;

(C) making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates;

(D) using any name or title of any policy or class of policies misrepresenting the true nature thereof; or

(E) making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender his

insurance.

(2) Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to any person in the conduct of his insurance business, which is untrue, deceptive, or misleading.

(3) Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false, or maliciously critical of or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of insurance.

(4) Entering into any agreement to commit, or individually or by a concerted action committing any act of boycott, coercion, or intimidation resulting or tending to result in unreasonable restraint of, or a monopoly in, the business of insurance.

(5) Filing with any supervisory or other public official, or making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of financial condition of an insurer with intent to deceive. Making any false entry in any book, report, or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to which such insurer is required by law to report, or which has authority by law to examine into its condition or into any of its affairs, or, with like intent, willfully omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report, or statement of such insurer.

(6) Issuing or delivering or permitting agents, officers, or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.

(7) Making or permitting any of the following:

(A) Unfair discrimination between individuals of the same class and equal expectation of life in the rates or assessments charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract; however, in determining the class, consideration may be given to the nature of the risk, plan of insurance, the actual or expected expense of conducting the business, or any other relevant factor.

(B) Unfair discrimination between individuals of the same class involving essentially the same hazards in the amount of premium, policy fees, assessments, or rates charged or made for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever; however, in determining the class, consideration may be given to the nature of the risk, the plan of insurance, the actual or expected expense of conducting the business, or any other relevant factor.

(C) Excessive or inadequate charges for premiums, policy fees, assessments, or rates, or making or permitting any unfair discrimination between persons of the same class involving essentially the same hazards, in the amount of premiums, policy fees, assessments, or rates charged or made for:

(i) policies or contracts of reinsurance or joint reinsurance, or abstract and title insurance;

(ii) policies or contracts of insurance against loss or damage to aircraft, or against liability arising out of the ownership, maintenance, or use of any aircraft, or of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance; or

(iii) policies or contracts of any other kind or kinds of insurance whatsoever.

However, nothing contained in clause (C) shall be construed to apply to any of the kinds of insurance referred to in clauses (A) and (B) nor to reinsurance in relation to such kinds of insurance. Nothing in clause (A), (B), or (C) shall be construed as making or permitting any excessive, inadequate, or unfairly discriminatory charge or rate or any charge or rate determined by the department or commissioner to meet the requirements of any other insurance

rate regulatory law of this state.

(8) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract or policy of insurance of any kind or kinds whatsoever, including but not in limitation, life annuities, or agreement as to such contract or policy other than as plainly expressed in such contract or policy issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends, savings, or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract or policy; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such insurance or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, limited liability company, or partnership, or any dividends, savings, or profits accrued thereon, or anything of value whatsoever not specified in the contract. Nothing in this subdivision and subdivision (7) shall be construed as including within the definition of discrimination or rebates any of the following practices:

(A) Paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, so long as any such bonuses or abatement of premiums are fair and equitable to policyholders and for the best interests of the company and its policyholders.

(B) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expense.

(C) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first year or of any subsequent year of insurance thereunder, which may be made retroactive only for such policy year.

(D) Paying by an insurer or agent thereof duly licensed as such under the laws of this state of money, commission, or brokerage, or giving or allowing by an insurer or such licensed agent thereof anything of value, for or on account of the solicitation or negotiation of policies or other contracts of any

kind or kinds, to a broker, agent, or solicitor duly licensed under the laws of this state, but such broker, agent, or solicitor receiving such consideration shall not pay, give, or allow credit for such consideration as received in whole or in part, directly or indirectly, to the insured by way of rebate.

(9) Requiring, as a condition precedent to loaning money upon the security of a mortgage upon real property, that the owner of the property to whom the money is to be loaned negotiate any policy of insurance covering such real property through a particular insurance agent or broker or brokers. However, this subdivision shall not prevent the exercise by any lender of its or his right to approve or disapprove of the insurance company selected by the borrower to underwrite the insurance.

(10) Entering into any contract, combination in the form of a trust or otherwise, or conspiracy in restraint of commerce in the business of insurance.

(11) Monopolizing or attempting to monopolize or combining or conspiring with any other person or persons to monopolize any part of commerce in the business of insurance. However, participation as a member, director, or officer in the activities of any nonprofit organization of agents or other workers in the insurance business shall not be interpreted, in itself, to constitute a combination in restraint of trade or as combining to create a monopoly as provided in this subdivision and subdivision (10). The enumeration in this chapter of specific unfair methods of competition and unfair or deceptive acts and practices in the business of insurance is not exclusive or restrictive or intended to limit the powers of the commissioner or department or of any court of review under section 8 of this chapter.

(12) Requiring as a condition precedent to the sale of real or personal property under any contract of sale, conditional sales contract, or other similar instrument or upon the security of a chattel mortgage, that the buyer of such property negotiate any policy of insurance covering such property through a particular insurance company, agent, or broker or brokers. However, this subdivision shall not prevent the exercise by any seller of such property or the one making a loan thereon, of his, her, or its right to approve or disapprove of the insurance company selected by the buyer to underwrite the insurance.

(13) Issuing, offering, or participating in a plan to issue or offer, any policy or certificate of insurance of any kind or character as an inducement to the purchase of any property, real, personal, or

mixed, or services of any kind, where a charge to the insured is not made for and on account of such policy or certificate of insurance. However, this subdivision shall not apply to any of the following:

(A) Insurance issued to credit unions or members of credit unions in connection with the purchase of shares in such credit unions.

(B) Insurance employed as a means of guaranteeing the performance of goods and designed to benefit the purchasers or users of such goods.

(C) Title insurance.

(D) Insurance written in connection with an indebtedness and intended as a means of repaying such indebtedness in the event of the death or disability of the insured.

(E) Insurance provided by or through motorists service clubs or associations.

(F) Insurance that is provided to the purchaser or holder of an air transportation ticket and that:

(i) insures against death or nonfatal injury that occurs during the flight to which the ticket relates;

(ii) insures against personal injury or property damage that occurs during travel to or from the airport in a common carrier immediately before or after the flight;

(iii) insures against baggage loss during the flight to which the ticket relates; or

(iv) insures against a flight cancellation to which the ticket relates.

(14) Refusing, because of the for-profit status of a hospital or medical facility, to make payments otherwise required to be made under a contract or policy of insurance for charges incurred by an insured in such a for-profit hospital or other for-profit medical facility licensed by the state department of health.

(15) Refusing to insure an individual, refusing to continue to issue insurance to an individual, limiting the amount, extent, or kind of coverage available to an individual, or charging an individual a different rate for the same coverage, solely because of that individual's blindness or partial blindness, except where the refusal, limitation, or rate differential is based on sound actuarial principles or is related to actual or reasonably anticipated experience.

(16) Committing or performing, with such frequency as to indicate a general practice, unfair claim settlement practices (as

defined in section 4.5 of this chapter).

(17) Between policy renewal dates, unilaterally canceling an individual's coverage under an individual or group health insurance policy solely because of the individual's medical or physical condition.

(18) Using a policy form or rider that would permit a cancellation of coverage as described in subdivision (17).

(19) Violating IC 27-1-22-25 or IC 27-1-22-26 concerning motor vehicle insurance rates.

(20) Violating IC 27-8-21-2 concerning advertisements referring to interest rate guarantees.

(21) Violating IC 27-8-24.3 concerning insurance and health plan coverage for victims of abuse.

(22) Violating IC 27-8-26 concerning genetic screening or testing.

(23) Violating IC 27-1-15.6-3(b) concerning licensure of insurance producers.

(24) Violating IC 27-2-21 concerning use of credit information in underwriting of property and casualty insurance.

SECTION 4. IC 27-8-10-2.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 2.1. (a) There is established a nonprofit legal entity to be referred to as the Indiana comprehensive health insurance association, which must assure that health insurance is made available throughout the year to each eligible Indiana resident applying to the association for coverage. All carriers, health maintenance organizations, limited service health maintenance organizations, and self-insurers providing health insurance or health care services in Indiana must be members of the association. The association shall operate under a plan of operation established and approved under subsection (c) and shall exercise its powers through a board of directors established under this section.

(b) The board of directors of the association consists of seven (7) members whose principal residence is in Indiana selected as follows:

(1) Three (3) members to be appointed by the commissioner from the members of the association, one (1) of which must be a representative of a health maintenance organization.

(2) Two (2) members to be appointed by the commissioner shall be consumers representing policyholders.

(3) Two (2) members shall be the state budget director or designee and the commissioner of the department of insurance or designee.

The commissioner shall appoint the chairman of the board, and the board shall elect a secretary from its membership. The term of office

of each appointed member is three (3) years, subject to eligibility for reappointment. Members of the board who are not state employees may be reimbursed from the association's funds for expenses incurred in attending meetings. The board shall meet at least semiannually, with the first meeting to be held not later than May 15 of each year.

(c) The association shall submit to the commissioner a plan of operation for the association and any amendments to the plan necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation becomes effective upon approval in writing by the commissioner consistent with the date on which the coverage under this chapter must be made available. The commissioner shall, after notice and hearing, approve the plan of operation if the plan is determined to be suitable to assure the fair, reasonable, and equitable administration of the association and provides for the sharing of association losses on an equitable, proportionate basis among the member carriers, health maintenance organizations, limited service health maintenance organizations, and self-insurers. If the association fails to submit a suitable plan of operation within one hundred eighty (180) days after the appointment of the board of directors, or at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall adopt rules under IC 4-22-2 necessary or advisable to implement this section. These rules are effective until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner. The plan of operation must:

(1) establish procedures for the handling and accounting of assets and money of the association;

(2) establish the amount and method of reimbursing members of the board;

(3) establish regular times and places for meetings of the board of directors;

(4) establish procedures for records to be kept of all financial transactions, and for the annual fiscal reporting to the commissioner;

(5) establish procedures whereby selections for the board of directors will be made and submitted to the commissioner for approval;

(6) contain additional provisions necessary or proper for the execution of the powers and duties of the association; and

(7) establish procedures for the periodic advertising of the general availability of the health insurance coverages from the association.

(d) The plan of operation may provide that any of the powers and duties of the association be delegated to a person who will perform functions similar to those of this association. A delegation under this section takes effect only with the approval of both the board of directors and the commissioner. The commissioner may not approve a delegation unless the protections afforded to the insured are substantially equivalent to or greater than those provided under this chapter.

(e) The association has the general powers and authority enumerated by this subsection in accordance with the plan of operation approved by the commissioner under subsection (c). The association has the general powers and authority granted under the laws of Indiana to carriers licensed to transact the kinds of health care services or health insurance described in section 1 of this chapter and also has the specific authority to do the following:

(1) Enter into contracts as are necessary or proper to carry out this chapter, subject to the approval of the commissioner.

(2) Sue or be sued, including taking any legal actions necessary or proper for recovery of any assessments for, on behalf of, or against participating carriers.

(3) Take legal action necessary to avoid the payment of improper claims against the association or the coverage provided by or through the association.

(4) Establish a medical review committee to determine the reasonably appropriate level and extent of health care services in each instance.

(5) Establish appropriate rates, scales of rates, rate classifications and rating adjustments, such rates not to be unreasonable in relation to the coverage provided and the reasonable operational expenses of the association.

(6) Pool risks among members.

(7) Issue policies of insurance on an indemnity or provision of service basis providing the coverage required by this chapter.

(8) Administer separate pools, separate accounts, or other plans or arrangements considered appropriate for separate members or groups of members.

(9) Operate and administer any combination of plans, pools, or other mechanisms considered appropriate to best accomplish the fair and equitable operation of the association.

(10) Appoint from among members appropriate legal, actuarial, and other committees as necessary to provide technical assistance in the operation of the association, policy and other contract

design, and any other function within the authority of the association.

(11) Hire an independent consultant.

(12) Develop a method of advising applicants of the availability of other coverages outside the association and may promulgate a list of health conditions the existence of which would deem an applicant eligible without demonstrating a rejection of coverage by one (1) carrier.

(13) Provide for the use of managed care plans for insureds, including the use of:

(A) health maintenance organizations; and

(B) preferred provider plans.

(14) Solicit bids directly from providers for coverage under this chapter.

(f) Rates for coverages issued by the association may not be unreasonable in relation to the benefits provided, the risk experience, and the reasonable expenses of providing the coverage. **The association shall annually adjust premium rates based on the actuarial study completed under section 2.2 of this chapter.** Separate scales of premium rates based on age apply for individual risks. Premium rates must take into consideration the extra morbidity and administration expenses, if any, for risks insured in the association. The rates for a given classification may not be more than one hundred fifty percent (150%) of the average premium rate for that class charged by the five (5) carriers with the largest premium volume in the state during the preceding calendar year. In determining the average rate of the five (5) largest carriers, the rates charged by the carriers shall be actuarially adjusted to determine the rate that would have been charged for benefits identical to those issued by the association. All rates adopted by the association must be submitted to the commissioner for approval.

(g) Following the close of the association's fiscal year, the association shall determine the net premiums, the expenses of administration, and the incurred losses for the year. Any net loss shall be assessed by the association to all members in proportion to their respective shares of total health insurance premiums, excluding premiums for Medicaid contracts with the state of Indiana, received in Indiana during the calendar year (or with paid losses in the year) coinciding with or ending during the fiscal year of the association or any other equitable basis as may be provided in the plan of operation. For self-insurers, health maintenance organizations, and limited service health maintenance organizations that are members of the association,

the proportionate share of losses must be determined through the application of an equitable formula based upon claims paid, excluding claims for Medicaid contracts with the state of Indiana, or the value of services provided. In sharing losses, the association may abate or defer in any part the assessment of a member, if, in the opinion of the board, payment of the assessment would endanger the ability of the member to fulfill its contractual obligations. The association may also provide for interim assessments against members of the association if necessary to assure the financial capability of the association to meet the incurred or estimated claims expenses or operating expenses of the association until the association's next fiscal year is completed. Net gains, if any, must be held at interest to offset future losses or allocated to reduce future premiums. Assessments must be determined by the board members specified in subsection (b)(1), subject to final approval by the commissioner.

(h) The association shall conduct periodic audits to assure the general accuracy of the financial data submitted to the association, and the association shall have an annual audit of its operations by an independent certified public accountant.

(i) The association is subject to examination by the department of insurance under IC 27-1-3.1. The board of directors shall submit, not later than March 30 of each year, a financial report for the preceding calendar year in a form approved by the commissioner.

(j) All policy forms issued by the association must conform in substance to prototype forms developed by the association, must in all other respects conform to the requirements of this chapter, and must be filed with and approved by the commissioner before their use.

(k) The association may not issue an association policy to any individual who, on the effective date of the coverage applied for, does not meet the eligibility requirements of section 5.1 of this chapter.

(l) The association shall pay an agent's referral fee of twenty-five dollars ($25) to each insurance agent who refers an applicant to the association if that applicant is accepted.

(m) The association and the premium collected by the association shall be exempt from the premium tax, the gross income tax, the adjusted gross income tax, supplemental corporate net income, or any combination of these, or similar taxes upon revenues or income that may be imposed by the state.

(n) Members who after July 1, 1983, during any calendar year, have paid one (1) or more assessments levied under this chapter may either:

(1) take a credit against premium taxes, gross income taxes, adjusted gross income taxes, supplemental corporate net income

taxes, or any combination of these, or similar taxes upon revenues or income of member insurers that may be imposed by the state, up to the amount of the taxes due for each calendar year in which the assessments were paid and for succeeding years until the aggregate of those assessments have been offset by either credits against those taxes or refunds from the association; or

(2) any member insurer may include in the rates for premiums charged for insurance policies to which this chapter applies amounts sufficient to recoup a sum equal to the amounts paid to the association by the member less any amounts returned to the member insurer by the association, and the rates shall not be deemed excessive by virtue of including an amount reasonably calculated to recoup assessments paid by the member.

(o) The association shall provide for the option of monthly collection of premiums.

SECTION 5. IC 27-8-10-2.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 2.2. (a) Each year, the association shall complete an actuarial study of the association's operations.**

(b) The association shall submit the actuarial study required under subsection (a) to the legislative council.

SECTION 6. IC 34-30-2-111.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 111.7. IC 27-2-21-19 (Concerning the liability of insurance producers in actions arising from the use of credit information by an insurer).**

COMMITTEE REPORT

Mr. President: The Senate Committee on Health and Provider Services, to which was referred Senate Bill No. 276, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 6, line 25, after "2.2." insert "**(a)**".

Page 6, after line 26, begin a new line block indented and insert:

"**(b) The association shall submit the actuarial study required under subsection (a) to the legislative council.**"

and when so amended that said bill do pass.

(Reference is to SB 276.)

MILLER, Chairperson

Committee Vote: Yeas 11, Nays 0.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Insurance, Corporations and Small Business, to which was referred Senate Bill 276, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 27-2-21 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

Chapter 21. Credit Information in Property and Casualty Insurance

Sec. 1. As used in this chapter, "applicant" means an individual who applies for a policy of property and casualty insurance.

Sec. 2. As used in this chapter, "claim loss" means a claim paid under a policy of property and casualty insurance, including a claim for:

(1) bodily injury;

(2) property damage;

(3) medical payments;

(4) collision coverage;

(5) comprehensive coverage;

(6) car rental coverage; or

(7) towing coverage.

Sec. 3. As used in this chapter, "commissioner" refers to the commissioner of the department.

Sec. 4. As used in this chapter, "credit information" means credit related information obtained through a review of a credit history, credit report, or credit score, or on an application for a policy of property and casualty insurance.

Sec. 5. As used in this chapter, "credit score" means a number or rating derived through a credit scoring methodology.

Sec. 6. As used in this chapter, "credit scoring methodology" means the particular algorithm, computer model, or other method used by an insurer to reduce to a numerical or other rating for use in the insurance underwriting process certain credit history data contained in an individual's credit report.

Sec. 7. As used in this chapter, "department" refers to the department of insurance created under IC 27-1-1-1.

Sec. 8. As used in this chapter, "insured" means an individual who is entitled to coverage under a policy of property and casualty insurance.

Sec. 9. As used in this chapter, "insurer" means a person that:

(1) is described in IC 27-1-2-3(x); and

(2) issues a policy of property and casualty insurance.

Sec. 10. As used in this chapter, "property and casualty insurance" means one (1) or more of the kinds of insurance described in Class 2 and Class 3 of IC 27-1-5-1.

Sec. 11. (a) This chapter applies to an individual policy of property and casualty insurance.

(b) This chapter does not apply to a commercial line of insurance.

Sec. 12. (a) An insurer may not use a credit score until the insurer files with the commissioner the credit scoring methodology and changes to the credit scoring methodology that the insurer uses to develop the credit score.

(b) The commissioner shall review a credit scoring methodology and changes to the credit scoring methodology filed under subsection (a) for compliance with Indiana insurance laws and rules.

Sec. 13. (a) An insurer may not, based solely on credit information, refuse to issue, refuse to renew, or cancel a policy of property and casualty insurance.

(b) An insurer does not violate subsection (a) if the insurer offers to provide continuous and identical coverage to an insured under a policy of property and casualty insurance underwritten:

(1) by an affiliate of the insurer; and

(2) in the same rating class.

Sec. 14. If the credit score of an insured or applicant is adversely impacted or cannot be generated because the credit history of the insured or applicant is insufficient, an insurer shall:

(1) apply underwriting or rating criteria to the insured or applicant as if the insured or applicant had a neutral credit history, as defined in the insurer's underwriting guidelines or rate making standards unless otherwise actuarially justified; or

(2) exclude the use of credit as a factor in the underwriting or rating process.

Sec. 15. An insurer may not, based on credit information, refuse to issue, refuse to renew, or cancel a policy of property and casualty insurance, or transfer an insured to an affiliate or to a different rating class if the insured has:

(1) continuously maintained a policy of property and casualty insurance issued by the insurer;

(2) had no claim loss on the policy specified in subdivision (1); and

(3) had no moving traffic violations;

during the three (3) years immediately preceding the date on which the insurer makes a determination described in this section.

Sec. 16. (a) If credit information is used as a basis for a refusal to issue, refusal to renew, cancellation, or rating of a policy of property and casualty insurance, the insurer shall provide notice to the insured or applicant of the insurer's use of credit information as a basis for the refusal to issue, refusal to renew, cancellation, or rating of the policy of property and casualty insurance according to the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.).

(b) An insurer shall include in a notice required under subsection (a) notice that the insured or applicant has the right to, not more than ninety (90) days after the insured or applicant receives the notice required under subsection (a), request in writing from the insurer an explanation of the most significant reasons for the credit score result, including the principal factors involved in the refusal to issue, refusal to renew, cancellation, or rating of the policy of property and casualty insurance.

(c) Not more than twenty-one (21) business days after an insurer receives a request under subsection (b):

(1) the insurer; or

(2) a third party that:

(A) possesses the information necessary to provide an explanation requested under subsection (b); and

(B) is directed by the insurer to provide the requested explanation;

shall provide the requested explanation in writing to the insured or applicant.

(d) If an insurer, in the notice provided under subsection (a), provided the explanation requested under subsection (b), the insurer has met the requirement of subsection (c).

Sec. 17. (a) An insurer shall not use credit information as a pretext for discrimination against an insured or applicant that is based on the gender, race, nationality, or religion of the insured or applicant.

(b) A credit scoring methodology may not be used by an insurer if the credit scoring methodology incorporates the gender, race, nationality, or religion of an insured or applicant.

Sec. 18. Information provided by an insurer to the commissioner

under this chapter is confidential.

Sec. 19. An insurance producer licensed under IC 27-1-15.6 is not liable in any action arising from the use of credit information by an insurer if the insurance producer complies with the insurer's procedures that are provided to the insurance producer by the insurer concerning the use of credit information.

Sec. 20. A willful violation of this chapter is an unfair and deceptive act and practice in the business of insurance under IC 27-4-1-4, as determined by the commissioner.

Sec. 21. This chapter is not intended to conflict with any disclosure provisions of state law or the federal Truth in Lending Act (15 U.S.C. 1601 et seq.).

SECTION 2. IC 27-2-21-16.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 2, 2004]: **Sec. 16.1. (a) This section applies to an insured or applicant to whom notice is provided under section 16 of this chapter.**

(b) This section supplements the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.).

(c) In addition to the explanation that an insurer must provide under section 16 of this chapter, an insurer shall, not more than twenty-one (21) business days after the insurer receives a request under section 16 of this chapter, provide in writing to the insured or applicant the requested explanation, and additional information involved in the refusal to issue, refusal to renew, cancellation, or rating of the policy of property and casualty insurance, including:

(1) notice that a credit score was a determining factor in the insurer's decision;

(2) a thorough explanation of the credit scoring process used by the insurer;

(3) a list of all factors contained in the credit history of the insured or applicant that were used to derive a credit score that negatively affected the insurability of the insured or applicant; and

(4) an explanation of how the factors listed under subdivision (3) negatively affected the insurability of the insured or applicant.

SECTION 3. IC 27-4-1-4, AS AMENDED BY P.L.132-2001, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 4. The following are hereby defined as unfair methods of competition and unfair and deceptive acts and practices in the business of insurance:

(1) Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, or statement:

(A) misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon;

(B) making any false or misleading statement as to the dividends or share of surplus previously paid on similar policies;

(C) making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates;

(D) using any name or title of any policy or class of policies misrepresenting the true nature thereof; or

(E) making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender his insurance.

(2) Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to any person in the conduct of his insurance business, which is untrue, deceptive, or misleading.

(3) Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false, or maliciously critical of or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of insurance.

(4) Entering into any agreement to commit, or individually or by a concerted action committing any act of boycott, coercion, or intimidation resulting or tending to result in unreasonable restraint of, or a monopoly in, the business of insurance.

(5) Filing with any supervisory or other public official, or making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or causing directly or indirectly, to

be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of financial condition of an insurer with intent to deceive. Making any false entry in any book, report, or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to which such insurer is required by law to report, or which has authority by law to examine into its condition or into any of its affairs, or, with like intent, willfully omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report, or statement of such insurer.

(6) Issuing or delivering or permitting agents, officers, or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.

(7) Making or permitting any of the following:

(A) Unfair discrimination between individuals of the same class and equal expectation of life in the rates or assessments charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract; however, in determining the class, consideration may be given to the nature of the risk, plan of insurance, the actual or expected expense of conducting the business, or any other relevant factor.

(B) Unfair discrimination between individuals of the same class involving essentially the same hazards in the amount of premium, policy fees, assessments, or rates charged or made for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever; however, in determining the class, consideration may be given to the nature of the risk, the plan of insurance, the actual or expected expense of conducting the business, or any other relevant factor.

(C) Excessive or inadequate charges for premiums, policy fees, assessments, or rates, or making or permitting any unfair discrimination between persons of the same class involving essentially the same hazards, in the amount of premiums, policy fees, assessments, or rates charged or made for:

(i) policies or contracts of reinsurance or joint reinsurance, or abstract and title insurance;

(ii) policies or contracts of insurance against loss or damage to aircraft, or against liability arising out of the ownership, maintenance, or use of any aircraft, or of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance; or

(iii) policies or contracts of any other kind or kinds of insurance whatsoever.

However, nothing contained in clause (C) shall be construed to apply to any of the kinds of insurance referred to in clauses (A) and (B) nor to reinsurance in relation to such kinds of insurance. Nothing in clause (A), (B), or (C) shall be construed as making or permitting any excessive, inadequate, or unfairly discriminatory charge or rate or any charge or rate determined by the department or commissioner to meet the requirements of any other insurance rate regulatory law of this state.

(8) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract or policy of insurance of any kind or kinds whatsoever, including but not in limitation, life annuities, or agreement as to such contract or policy other than as plainly expressed in such contract or policy issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends, savings, or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract or policy; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such insurance or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, limited liability company, or partnership, or any dividends, savings, or profits accrued thereon, or anything of value whatsoever not specified in the contract. Nothing in this subdivision and subdivision (7) shall be construed as including within the definition of discrimination or rebates any of the following practices:

(A) Paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, so long as any such bonuses or

abatement of premiums are fair and equitable to policyholders and for the best interests of the company and its policyholders.

(B) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expense.

(C) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first year or of any subsequent year of insurance thereunder, which may be made retroactive only for such policy year.

(D) Paying by an insurer or agent thereof duly licensed as such under the laws of this state of money, commission, or brokerage, or giving or allowing by an insurer or such licensed agent thereof anything of value, for or on account of the solicitation or negotiation of policies or other contracts of any kind or kinds, to a broker, agent, or solicitor duly licensed under the laws of this state, but such broker, agent, or solicitor receiving such consideration shall not pay, give, or allow credit for such consideration as received in whole or in part, directly or indirectly, to the insured by way of rebate.

(9) Requiring, as a condition precedent to loaning money upon the security of a mortgage upon real property, that the owner of the property to whom the money is to be loaned negotiate any policy of insurance covering such real property through a particular insurance agent or broker or brokers. However, this subdivision shall not prevent the exercise by any lender of its or his right to approve or disapprove of the insurance company selected by the borrower to underwrite the insurance.

(10) Entering into any contract, combination in the form of a trust or otherwise, or conspiracy in restraint of commerce in the business of insurance.

(11) Monopolizing or attempting to monopolize or combining or conspiring with any other person or persons to monopolize any part of commerce in the business of insurance. However, participation as a member, director, or officer in the activities of any nonprofit organization of agents or other workers in the insurance business shall not be interpreted, in itself, to constitute a combination in restraint of trade or as combining to create a monopoly as provided in this subdivision and subdivision (10). The enumeration in this chapter of specific unfair methods of

competition and unfair or deceptive acts and practices in the business of insurance is not exclusive or restrictive or intended to limit the powers of the commissioner or department or of any court of review under section 8 of this chapter.

(12) Requiring as a condition precedent to the sale of real or personal property under any contract of sale, conditional sales contract, or other similar instrument or upon the security of a chattel mortgage, that the buyer of such property negotiate any policy of insurance covering such property through a particular insurance company, agent, or broker or brokers. However, this subdivision shall not prevent the exercise by any seller of such property or the one making a loan thereon, of his, her, or its right to approve or disapprove of the insurance company selected by the buyer to underwrite the insurance.

(13) Issuing, offering, or participating in a plan to issue or offer, any policy or certificate of insurance of any kind or character as an inducement to the purchase of any property, real, personal, or mixed, or services of any kind, where a charge to the insured is not made for and on account of such policy or certificate of insurance. However, this subdivision shall not apply to any of the following:

(A) Insurance issued to credit unions or members of credit unions in connection with the purchase of shares in such credit unions.

(B) Insurance employed as a means of guaranteeing the performance of goods and designed to benefit the purchasers or users of such goods.

(C) Title insurance.

(D) Insurance written in connection with an indebtedness and intended as a means of repaying such indebtedness in the event of the death or disability of the insured.

(E) Insurance provided by or through motorists service clubs or associations.

(F) Insurance that is provided to the purchaser or holder of an air transportation ticket and that:

(i) insures against death or nonfatal injury that occurs during the flight to which the ticket relates;

(ii) insures against personal injury or property damage that occurs during travel to or from the airport in a common carrier immediately before or after the flight;

(iii) insures against baggage loss during the flight to which the ticket relates; or

(iv) insures against a flight cancellation to which the ticket relates.

(14) Refusing, because of the for-profit status of a hospital or medical facility, to make payments otherwise required to be made under a contract or policy of insurance for charges incurred by an insured in such a for-profit hospital or other for-profit medical facility licensed by the state department of health.

(15) Refusing to insure an individual, refusing to continue to issue insurance to an individual, limiting the amount, extent, or kind of coverage available to an individual, or charging an individual a different rate for the same coverage, solely because of that individual's blindness or partial blindness, except where the refusal, limitation, or rate differential is based on sound actuarial principles or is related to actual or reasonably anticipated experience.

(16) Committing or performing, with such frequency as to indicate a general practice, unfair claim settlement practices (as defined in section 4.5 of this chapter).

(17) Between policy renewal dates, unilaterally canceling an individual's coverage under an individual or group health insurance policy solely because of the individual's medical or physical condition.

(18) Using a policy form or rider that would permit a cancellation of coverage as described in subdivision (17).

(19) Violating IC 27-1-22-25 or IC 27-1-22-26 concerning motor vehicle insurance rates.

(20) Violating IC 27-8-21-2 concerning advertisements referring to interest rate guarantees.

(21) Violating IC 27-8-24.3 concerning insurance and health plan coverage for victims of abuse.

(22) Violating IC 27-8-26 concerning genetic screening or testing.

(23) Violating IC 27-1-15.6-3(b) concerning licensure of insurance producers.

(24) Violating IC 27-2-21 concerning use of credit information in underwriting of property and casualty insurance.".

Page 6, after line 28, begin a new paragraph and insert:

"SECTION 6. IC 34-30-2-111.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 111.7. IC 27-2-21-19 (Concerning the liability of insurance producers in actions arising from the use of credit information by an insurer).**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 276 as printed January 25, 2002.)

CROOKS, Chair

Committee Vote: yeas 7, nays 3.

HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 276 be amended to read as follows:

Page 4, between lines 30 and 31, begin a new paragraph and insert:

"**Sec. 22. An insurance producer or an insurer shall not obtain credit information on an insured or an applicant without giving sufficient notice and obtaining the written approval of the insured or the applicant. The written approval of the insured or the applicant shall be valid for all subsequent requests for credit information while insured by the same insurer unless revoked in writing by the insured or the applicant.**"

(Reference is to ESB 276 as printed February 19, 2002.)

BURTON